



BETWEEN: **TOLTEC SCHOOL DISTRICT**
3315 North Toltec Road
Toltec, Arizona 85131 (“Client”)

AND: **WESTERN TECHNOLOGIES INC.**
3480 South Dodge Boulevard
Tucson, Arizona 85713 (“WT”)

FOR THE PROJECT: **Special Inspection and Testing Services**
Civil Improvements for Toltec District Offices and
Toltec Elementary School (“Project”)
Tonto Road and Toltec Road
Toltec, Arizona (“Site”)

1.0 PROJECT DESCRIPTION

The scope of services and quantities shown herein are based on:

- ## 2.0 PURPOSE

3.0 SCOPE OF SERVICES

Based on our understanding of the project and related experience on similar projects, WT estimates that the following scope of services will meet CLIENT's needs.

3.1 On-Call Field Testing

WT will provide an engineering technician to periodically provide sampling and testing for the following at frequencies determined by others, or the project specifications. WT will perform on-call testing for the following types of work:

- a. Subgrade/aggregate base for paved areas
- b. Asphalt paving
- c. Concrete (We will perform standard testing of plastic concrete including slump, concrete temperature, and ambient air temperature. WT will provide molds and will fabricate cylinders in sets of 5 to be tested at: 1 at 7 days, 3 at 28 days, and 1 hold cylinder maintained in case of 28-day specimens fail specified compressive strength requirements.)

4.0 SCHEDULE

Notification for sampling and testing will be the responsibility of the CLIENT or the CLIENT's authorized representative. In order to accommodate on-call services, WT requests a minimum of 24 hours notification. Scheduling should be done by calling our Tucson office at (520) 748-2262 between 7:00 a.m. and 4:00 p.m.

5.0 ASSUMPTIONS

The following assumptions were made in preparation of this proposal:

- CLIENT or CLIENT's representative will be responsible for tracking project status regarding materials testing

The following items are not included in this proposal; however, these services can be performed upon request and will be billed in accordance with our Schedule of Services and Fees.

- Portland cement concrete mix design testing and/or review.
- Aggregate and other construction materials acceptance testing.
- Weekend or holiday work, overtime in excess of 8 hours per day.
- Retesting of failed densities, concrete (beyond compression testing of hold specimens).
- Structural steel fabrication shop inspection (WT can provide inspections for additional fees if requested).

6.0 MANNER OF PAYMENT

WT will invoice CLIENT monthly for services performed. Each invoice is independent and shall entitle WT to payment. Payment for such billing is due upon receipt of invoice.

7.0 FEES

Our fees will be billed on a time and materials basis per schedule of services and fees located in Appendix A. If services are requested which are not included within this proposal, the rates charged will be those of WT's Schedule of Services and Fees in effect at the time of the request.

Presented below is an estimate of the quantities and fees for the observation and materials testing for this project as outlined in the Scope of Services portion of this proposal. These quantities and fees are based on anticipated construction schedules, an estimated number of visits, an estimated number of tests per visit, and our review of the drawings and specifications. The actual fees may vary depending upon conditions, circumstances, and actual quantities of services requested by CLIENT or CLIENT's representative during construction. The fees contained herein are valid for 90 calendar days from the date of this proposal, after which time a review by WT will be required.

7.1 Construction Materials Observation and Testing

DESCRIPTION	UNIT	QUANTITY	RATE	EXTENSION
Engineering Technician: Soil, asphalt, and/or masonry and concrete testing and observation	Hour	52	\$ 45.00	\$ 2,340.00
Vehicle Charge: Per Trip	Each	13	\$ 65.00	\$ 845.00
Compressive Strength Tests: Set of 5 cylindrical concrete, grout & mortar	Each	3	\$ 62.00	\$ 186.00
Moisture-Density Relationship: ASTM D698/AASHTO T99	Each	1	\$ 120.00	\$ 120.00
Liquid Limit and Plasticity Index	Each	1	\$ 57.00	\$ 57.00
Coarse and Fine Sieve Analysis	Each	1	\$ 80.00	\$ 80.00
Marshall Unit Weight: Pre-mixed, average of 3	Each	1	\$ 130.00	\$ 130.00
Maximum Theoretical Density (Rice)	Each	1	\$ 120.00	\$ 120.00
Oil Content by Ignition / Gradation	Each	1	\$ 180.00	\$ 180.00
Project Manager: Report review, project administration, consultation	Hour	2	\$ 90.00	\$ 180.00
Estimated Subtotal				\$ 4,238.00

Note: This estimate is based on estimated services and time associated with performing these services. Costs will be determined by actual services performed and may decrease or increase from the total above due to contractor scheduling and coordination.

8.0 STANDARD TERMS AND CONDITIONS / COMPLETE AGREEMENT

The "Standard Terms and Conditions" set forth in the most recent version of WTI Form No. 120 (a copy of which has been enclosed herewith) are each and all incorporated herein as if fully set forth at this reference. Upon acceptance by CLIENT, all of the provisions set forth above will combine with the Standard Terms and Conditions to comprise a single, integrated contract (the "Agreement") between CLIENT and WT, provided that the terms and conditions set forth hereinabove will control over any contrary provision of the Standard Terms and Conditions. (CLIENT's representative may

initial the enclosed copy of WTI Form 120 for purposes of identifying it with this Proposal/Agreement. However, CLIENT's failure to initial or return a copy of said Form will not negate or otherwise affect CLIENT's acceptance of the Agreement in the manner provided below of the incorporation of the Standard Terms and Conditions into the Agreement as provided above.)

The Agreement contains the entire agreement between the parties with respect to the work to be performed thereunder and supersedes all other agreements with respect thereto. No representation or warranty with respect to such work shall be valid or binding unless set forth in the Agreement.

9.0 ACCEPTANCE

By signature below, WT offers to CLIENT the Agreement as described above. CLIENT may accept WT's offer in any of the following ways:

- (a) by signing in the space provided below and returning a signed copy hereof to WT, or
- (b) by notifying WT to commence the performance of the work described herein.

Such notification may be given verbally, by electronic transmission or in writing (for example, by delivery of CLIENT's purchase order referring to this Proposal/Agreement). In the event CLIENT accepts the Agreement by giving notification to proceed, CLIENT hereby agrees to return to WT a signed copy hereof, together with a copy of the enclosed Standard Terms and Conditions initialed for identification, within a reasonable time not to exceed five business days.

EXECUTED BY WT:

EXECUTED BY CLIENT:

/s/Patrick Cozzens

WT's Authorized Representative

Client's Authorized Representative

Patrick Cozzens

Typed or Printed Name

Typed or Printed Name

Director, CMT Services

Title

Title

April 19, 2017

Date

Date

STANDARD TERMS AND CONDITIONS

The Agreement between **Western Technologies Inc.** ("WT") and Client shall include and be subject to WT's Proposal and these Standard Terms and Conditions. The terms of the Agreement shall prevail over any different or additional terms contained in any document to which WT's work relates. WT's commencement of work shall constitute Client's acceptance of the Agreement.

1. SERVICES

1.1 WT agrees to render such services requested in writing by Client that are stated in the Scope of Services or similar written agreement. WT shall have no responsibility to perform services beyond such requests, and none shall be imputed or implied.

1.2 The services rendered by WT are for the benefit of Client alone and relate only to conditions observed at specified locations at the time WT's work is performed. There are no intended third-party beneficiaries to this Agreement, and nothing herein shall create a contractual relationship with or claim or cause of action in favor of a third party against WT.

1.3 The presence of WT's field technicians or representatives, if called for in the Agreement, is for the provision of services hereunder, and does not include supervision or direction of the work of Client or its subcontractors. Neither the presence of, nor any observation or testing by WT personnel shall excuse Client or its subcontractors from any deficiencies in their work.

1.4 When performing its work, WT will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Client shall indemnify, defend, and hold WT harmless from and against any damages to such structures and utilities that are not called to WT's attention and correctly shown on the plans furnished to WT. It is Client's obligation to contact appropriate utility companies and/or private utility locators for information regarding buried utilities, mark such utilities, and take other precautions to prevent damage or injury.

1.5 Client agrees that if Client commences litigation, mediation, arbitration, or any such proceeding against WT, WT shall have the right to withdraw and terminate ongoing work and services conducted for Client on any contract and project, in which event Client shall pay WT for work and services performed up to the time of termination.

2. PAYMENT

2.1 WT will invoice Client monthly for services performed. Client shall pay such invoices upon receipt without deduction for retention or offset. **Failure to pay within 60 days of invoice shall operate to release WT from any and all claims that Client may have; Client further shall have no right to use or rely on any report prepared by WT, and shall return all such reporting to WT.** Furthermore, WT shall have the right to immediately terminate and cease performance of all services then being performed for Client on any contract and project until all amounts owed are received by WT. Interest shall accrue on the unpaid balance of any invoice not paid in full within 30 days at the rate of 1.5% per month. Collection agency fees, attorneys' fees, and associated costs that are incurred by WT to collect past-due invoices (including post-judgment fees and costs) shall be payable by Client.

2.2 Estimates of fees are only estimates and shall not be regarded as "lump sum" or "fixed price" or "guaranteed maximum" compensation. Client remains obligated to pay WT's invoices for actual work performed, whether or not the fee estimate is exceeded. For work requested by Client that is additional to or outside the written Scope of Services and/or written service request, Client shall sign such documentation requesting such work or services and process and pay WT's invoices.

3. STANDARD OF CARE

3.1 The services referred to herein will be performed in accordance with the general standard of care practiced locally by providers of such services, and relate only to the conditions observed or samples tested at the time and place reported. **WT makes and intends no other warranty or representation, express or implied.** WT shall not be responsible for any consequences due to changed conditions or for the failure of any person or entity to perform or install work in accordance with the plans and specifications.

3.2 Soil, subsurface, and groundwater conditions can vary between and among sampling points and with time. WT makes no representation that the points selected for sampling are in any way representative of the entire site or project. **Unless circumstances have changed justifying an earlier expiration of validity, geotechnical and earthwork reports are valid for a period of one year from the date of issuance; all other reports, including Phase I reports, are valid for a period of 180 days from the date of issuance.**

3.3 Where WT's services involve geotechnical evaluations or field observation of earthwork, grading, filling, or compaction, Client agrees:

3.3.1 WT is not responsible for the manner in which such work is performed;

3.3.2 WT is not responsible for any work performed at any time when WT was not physically present and observing that specific work; and

3.3.3 For continuous observations, Client shall not allow grading, filling, or compaction to be performed at any time that WT is not physically present at the site, and shall restrict the amount and extent of such grading, filling and compaction to that which can be observed by WT at the site.

3.4 WT has no right, duty, or obligation to stop Client's or any of Client's subcontractor's work.

3.5 Client agrees and acknowledges that WT makes no recommendation or opinion other than those set forth in writing and contained in WT's reporting; WT makes no oral recommendations or opinions. Field and lab technicians are not engineers. Client acknowledges and agrees that it has no right to rely on, and that there will be no, express or implied recommendations or opinions of any sort from field or lab technicians.

3.6 Client is obligated to, and shall, directly and specifically notify WT as and when Client wants WT to perform services hereunder. WT shall be subject to no implied duties to observe or test, or to provide reports, other than the actual observation, testing, and reporting performed.

3.7 "Certification" means and implies the expression of professional opinion. It is not a warranty or guaranty.

4. INDEMNITY AND INSURANCE

4.1 NOTWITHSTANDING ANY OTHER PROVISION IN THE PARTIES' AGREEMENT, WT PROVIDES NO INDEMNITY, WARRANTY, OR GUARANTEE, EXPRESS OR IMPLIED, TO CLIENT OR TO ANY OTHER PERSON OR ENTITY.

4.2 Client shall be adequately insured. Client and its insurers jointly and severally waive subrogation against WT and its insurers.

5. LIMITATIONS OF LIABILITY

Client and WT recognize the relative risks and benefits of this Agreement, and agree to the fair allocation of risk between them as follows:

5.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, WT'S TOTAL AGGREGATE LIABILITY TO ANY PERSON OR ENTITY, INCLUDING CLIENT, ON ANY CLAIM, ACTION OR LIABILITY OF ANY KIND OR BASIS WHATSOEVER, IN ANY MANNER ARISING OUT OF THE WORK DONE BY WT SHALL BE STRICTLY LIMITED TO THE GREATER OF \$50,000 OR THE FEE CHARGED FOR WT'S SERVICES HEREUNDER.

5.2 WT shall not be liable for loss of profit, delay, or for any special, incidental, indirect, or consequential damages of any kind, nature or description, from any cause whatsoever.

5.3 No proceeding, action or claim of any kind whatsoever, whether in law or equity, may be brought against WT regarding any work performed by WT, more than four years after the cessation of WT's work.

5.4 EXCEPT FOR ENVIRONMENTAL SERVICES THAT SPECIFICALLY INCLUDE AN INDOOR MOLD SURVEY, NO ACTION OR CLAIM OF ANY KIND WHATSOEVER MAY BE BROUGHT AGAINST WT ARISING OUT OF THE PRESENCE OR EXISTENCE OF MOLD. ALL SUCH ACTIONS ARE ABSOLUTELY BARRED AND CLIENT ABSOLUTELY AND IRREVOCABLY RELEASES WT FROM ALL SUCH CLAIMS AND LIABILITIES.

5.5 No officer, director, principal, employee, or agent of WT shall ever be personally sued, joined, liable, or responsible regarding any claim whatsoever. **ALL SUCH ACTIONS ARE ABSOLUTELY BARRED AND CLIENT ABSOLUTELY AND IRREVOCABLY RELEASES SUCH INDIVIDUALS FROM ALL ACTIONS, CLAIMS, LIABILITIES, AND RESPONSIBILITY.**

6. HAZARDOUS MATERIALS AND OTHER SITE CONDITIONS

WT does not create, generate, arrange for or transport, dispose, own, or store hazardous materials or operate any such facility in the performance of its work. Client shall maintain possession of and be responsible for the removal and disposal of all hazardous materials including, but not limited to samples, drilling mud, fluids and cuttings, decontamination and well development fluids, and used protective gear and equipment. Client assumes full responsibility for compliance with the provisions of RCRA and any other federal or state statute or regulation governing the handling, treatment, or storage and disposal of hazardous wastes and pollutants. Client shall be solely responsible for notifying all appropriate agencies and prospective buyers of the existence of any hazardous or dangerous materials located on or in the project site, or discovered during the performance of the Agreement, as may be required or advised by such agencies and buyers.

7. PROPERTY

7.1 All work papers (including reports, field notes, laboratory notes, laboratory test data, calculations and other documents prepared by WT), electronic data files and other work product generated by or for WT in connection with the Scope of Work are the property of WT. Samples obtained shall remain the property of Client.

7.2 Client has the right to use the reports, recommendations, design criteria and similar information submitted to it by WT, provided that Client pays WT's invoices. Client expressly agrees that no information produced or provided by WT shall be used for or at any location or for any project or project extension that is not expressly set forth in this Agreement without WT's prior written permission.

7.3 Because data stored on electronic media can deteriorate or be modified without WT's knowledge or control, Client assumes all responsibility for the completeness, correctness, and/or readability of electronic data. Client will indemnify, defend, and hold WT harmless of and from the use of and any reliance upon any part of said electronic data and/or anything generated from them. The controlling document regarding any document prepared by WT shall remain and always be the signed hard-copy paper document, and not any electronic form or format of such document.

7.4 Client shall not assign this Agreement, any of WT's reporting or work product, or any legal or equitable claim involving WT, without the prior express written consent of WT. Any purported assignment without the prior express written consent of WT shall be null and void.

8. TERMINATION

In addition to termination otherwise authorized by law and equity, this Agreement may be terminated by either party upon providing written notice of termination.

9. WT NOT BOUND

WT shall not be bound by: any provision incorporating by reference any contract or term of any contract unless the term or terms incorporated by reference are specifically furnished to WT and are expressly agreed to in a writing signed by WT; any provision or agreement providing for or imposing liquidated damages however described or denominated; any provision waiving any right to a mechanic's lien; any provision conditioning payment for WT's services upon payment to Client by any third party; any provision requiring the application of law or jurisdiction other than that which applies to the place of the project; any provision permitting Client to take possession of any property of WT; or any provision requiring mediation or arbitration of any claim or dispute.

10. FEES AND COSTS

In the event of any claim or litigation arising out of the work, including the Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, consultants' fees, and costs.

**APPENDIX A
WESTERN TECHNOLOGIES, INC.
SCHEDULE OF SERVICES AND FEES**

CONSTRUCTION MATERIALS TESTING AND INSPECTION

Civil Improvements for Toltec District Offices and Toltec Elementary School

FIELD

Engineering Technician: Soil, asphalt, and/or masonry and concrete testing and observation	Per Hour	\$45.00
Special Inspector: IBC special inspections/foundation review	Per Hour	\$60.00
NDT Technician: Magnetic particle, penetrant testing, structural steel, welding, bolting, and spray applied fire-proofing inspection (3 hour minimum)	Per Hour	\$77.00
Certified Welding Inspector, Ultrasonic Testing	Per Hour	\$85.00
Asphalt Pavement Coring: Including core drilling equipment and 4" diamond bit	Per Hour	\$95.00
Vehicle Charge	Per Trip	\$65.00

LABORATORY

Compressive Strength Tests: Set of 5 cylindrical concrete, grout, or mortar	Each	\$62.00
Compressive Strength Tests: Shotcrete, set of 5	Each	\$160.00
Compressive Strength Tests: Drilled cores, includes end preparation	Each	\$60.00
Compressive Strength Tests: Grouted masonry wall prism, set of 3	Each	\$225.00
Moisture-Density Relationship: ASTM D698/AASHTO T99	Each	\$120.00
Moisture-Density Relationship: ASTM D1557/AASHTO T180	Each	\$160.00
Soil Expansion (Remolded swell)	Each	\$75.00
Soil Expansion with 1-Point Proctor	Each	\$125.00
Liquid Limit and Plasticity Index	Each	\$57.00
Pit-Run Sieve Analysis	Each	\$95.00
Coarse and Fine Sieve Analysis	Each	\$80.00
Coarse Sieve Analysis	Each	\$52.00
Fine Sieve Analysis and/or #200 wash	Each	\$52.00
Sand Equivalent: Average of 3	Each	\$85.00
Marshall Unit Weight: Pre-mixed, average of 3	Each	\$130.00
with Stability and Flow: Pre-mixed, average of 3	Each	\$180.00
Maximum Theoretical Density (Rice)	Each	\$120.00
Unit Weight and Thickness of Asphalt Cores	Each	\$45.00
Oil Content by Ignition / Gradation	Each	\$180.00

ENGINEERING

Project Manager: Report review, project administration, consultation	Per Hour	\$90.00
NDT Project Manager: Report review, project administration, consultation	Per Hour	\$95.00
Engineer Review	Per Hour	\$125.00

EXPLANATION OF UNIT RATES AND FEES

Services not listed above will be quoted upon request. Charges for sampling and pick-ups are considered field services and will be charged as detailed herein.

All hourly rates are portal-to-portal. A two-hour on-site minimum charge is applicable for construction materials testing field services. A three-hour minimum charge is applicable for nondestructive testing field services.

Samples will be stored in our laboratory for a period 30 days, after which they will be appropriately discarded.

Overtime is defined as work scheduled after 4:00 p.m., hours worked in excess of 8 hours during one day, and Saturdays and Sundays. Overtime will be billed at a rate of 1.5 times the unit rate. Holiday rates are at twice the unit rate.